

Wiley Rein & Fielding

September 8, 2000

Internal Revenue Service
1111 Constitution Ave.
Washington, D.C. 20224

Attention: Judith E. Kindall

T:EO:RA:T:P, Room 6033

Re: Announcement 2000-72 – Proposed Revenue Ruling Regarding Reporting and Disclosure Provisions for 527 Political Organizations

Dear Ms. Kindall:

This office represents the National Association of Business Political Action Committees, Inc. ("NABPAC"). The purpose of this letter is to convey some of NABPAC's concerns about announcement 2000-72 which contained the Internal Revenue Service's proposed revenue ruling regarding the new reporting and disclosure provisions for § 527 political organizations. NABPAC's comments will be limited to the proposed revenue ruling as it applies to the notification and reporting provisions of the new law for state political organizations that anticipate receipts in excess of \$25,000 per calendar year. As discussed in detail below, NABPAC believes the proposed ruling should be modified by expanding the manner in which currently reporting state PACs can comply with the law.

About NABPAC

NABPAC is a professional trade association of approximately 130 political action committees (PACs) sponsored by corporations, trade associations, and membership organizations. NABPAC's members are

registered with the Federal Election Commission (“FEC”) and qualify as “political committees” under the Federal Election Campaign Act (“Act”) and as “political organizations” under § 527 of the Internal Revenue Code (“IRC”). These members accounted for \$54 million of \$502 million raised by all PACs registered with the FEC during the 1997-98 election cycle. Many of NABPAC's members have one or more state political committees. A survey conducted by NABPAC of its members found that more than 60% of the respondents stated that they had one or more state PACs. One of the respondents, a trade association, indicated that it had more than 60 state PACs operated by various chapters throughout the country. Other respondents reported having 51, 37, and 33 state PACs. Of the 60% that had state PACs, more than 50% indicated that they had filed a form 8871 with the IRS. These State PACs already are registered and report to state agencies. Indeed, all but one indicated that the reporting threshold for contributions in their state was \$200 or less, with many reporting all contributions, or at least all contributions of \$50 or more. As for expenditures, every reporting state PAC indicated that the threshold for reporting expenditures was less than \$500, with \$250 being the highest reported state itemization threshold.

NABPAC itself is not a PAC and does not intervene in election campaigns for public office. It conducts research, holds conferences on politics and PAC management, and supports legislative and regulatory measures that promote political participation, communication, disclosure, and competition. Its headquarters and sole office is located in Arlington, Virginia, and its Web site is <www.nabpac.com>.

Announcement 2000-72

The recently proposed revenue ruling as it relates to state and local political committees that already report to state agencies appears to reiterate the statutory requirements applicable to these PACs. The proposed ruling does not appear to take into account that, for the most part, these state PACs are highly regulated by each state, nor does it appear to consider alternative means of complying with the new statutory requirements.

Under the heading of *Notice of Status* the proposed revenue ruling states that “a separate non-federal account is not required to register and report under FECA as a political committee. Therefore, a separate non-federal account that is described in § 527(e) is required to file Form 8871.” Proposed Revenue Ruling, Answer to Question 4. Further in response to the question of whether “political organizations that are required to report to state or local election agencies excepted from the notice requirement?”, the proposed revenue ruling states simply that “Section 527(i) does not exempt political organizations that file reports with state or local election agencies from the notice of status requirement. Therefore, unless the political organization meets one of the exceptions discussed above . . . , it must file Form 8871 with the Service.” *Id.* Question 5, Question and Answer.

Under the heading of *Periodic Reporting Requirements*, the proposed ruling acknowledges that “[p]olitical committees of a state or local candidate” and “[s]tate and local committees of political parties” are exempt from the filing requirements, but states that “[a]ll other political organizations, including other state and local political organizations, are subject to the reporting requirements of § 527(j), even if they file reports with state or local election agencies.” *Id.* Answer to Question 21. However, reports are not tied to state elections. Rather, the statute triggers reporting dates based on federal elections. *See* Question 27. Indeed, as acknowledged by the proposed revenue ruling “an election for purposes of these reporting dates does not include elections that are purely state or local elections” thus highlighting the fact that a state and local political committee will not have any

information sought by the statute in connection with federal elections. Answer to Question 27. Next, the revenue ruling reiterates that reports must itemize expenditures that aggregate \$500 or more in a calendar year, and contributions that aggregate \$200 or more in a calendar year. See Answer to Question 30.

DISCUSSION

While the proposed revenue ruling certainly appears to appropriately recharacterize the law, it does no more. However, as is evident from the proposed revenue ruling, the new law as it applies to state and local political committees is duplicative. One can only assume that this was a Congressional oversight since state and local political parties and state and local candidates are exempt from reporting under the new statutory provisions. NABPAC recognizes that the IRS is in the position of having to enforce the new statutory provisions. Nonetheless, these provisions do not prevent the IRS from enacting solutions to duplicative filings. Reportedly more than 9000 committees have filed a Form 8871 with the IRS. See, e.g. BNA, Inc. Money & Politics Report, Sept. 1, 2000, Number 401. While there is no empirical data available as to the breakdown of those committees that have filed with the IRS, one can venture a safe guess that at least 25% of the committees that have registered are state and local political committees that already report to the appropriate state agency.^[1] Indeed, if one state and local committee registered with the IRS for every federal PAC^[2] then there would nearly 4,000 state and local political committees registered with the IRS.

The burden of duplicative reporting on these committees is significant. These committees already report on time schedules that are dictated by state law tied to state elections and that are slightly different than the schedule in § 527. The reporting periods found in § 527 have no relevance to state PACs since they do not engage in federal election activity. Furthermore, the reporting thresholds under state law are not the same as the thresholds required by the new statutory provisions. Indeed, to our knowledge, all but two states have the same or lower reporting thresholds. See attachment 1 (Campaign Finance Report Filing Requirements, Campaign Finance Law 2000, published by the FEC). To the extent that these committees use computer programs to keep records of their data the currently existing programs will not be designed to capture the information which now must be reported to the IRS. Thus, these committees will be required to invest in new computer programs in order to comply with § 527 requirements when it is probable that their currently existing state reports have lower thresholds than is required by § 527. Even more burdensome, these committees will be required to re-input all of the data in order to comply with the IRS's new reporting form.

These burdens can be eliminated by the IRS without ignoring its statutory mandate. The IRS could follow the FEC's example in an analogous situation. The Federal Election Commission has reduced the burden on federal committees that must send copies of their reports to states in which they have made contributions. See 2 U.S.C. § 439(a). Due to the advent of the Internet, the FEC has issued waivers to 45 states to date because those states have access to the FEC website where contribution and expenditure information is already available on line. While there is a specific statutory provision in the Federal Election Campaign Act which permits the FEC to grant such waivers, 2 U.S.C. § 439(c), there is nothing in § 527 that would prevent the IRS from taking a similar approach. Indeed, there are states such as New York and Arizona which mandate electronic filing, and several others where electronic filing is voluntary. See Ariz. Rev. Stat. § 16-958; New York Elec. Law § 14-102.4. Moreover, even in states where there is no mandatory electronic filing, the Secretary of State's Office or the appropriate election

agency has created an electronic database which can be searched for copies of reports filed by state and local committees. Based on the FEC documentation found at Attachment 1, there are at least 29 states that have some electronic filing or a publicly available database via the Internet to search state reports. Under these circumstances there is no reason why the committee should be required to file duplicative information with the IRS. Like the states and the FEC, the IRS can link from its own website to each state's website where contribution and expenditure information is freely available to the public. This would save both the state and local political committees from duplicative filing while at the same time reduce the burden on the IRS to make this information available for public inspection. Thus, this seamless linkage to state websites can avoid duplicative filing.

The IRS also could simply require the state and local political committees that report to the appropriate state and local agency to file a copy of their state registrations and reports in lieu of Form 8872. If need be, the Committees can attach a completed page one of Form 8872 to the report so that the IRS will know the purpose of the report. This too could satisfy the IRS's mandate to obtain contribution and expenditure information from these committees. Here again, this approach is consistent with the approach taken by many state agencies when federal committees make contributions in connection with state and local elections. See, e.g., 10 Ill. Comp. Stat. 5/9-1.9; Ohio Rev. Code Ann. § 3517.107(c). Indeed, despite the fact that state statutes are often silent on this point, many states permit federal committees to simply file a copy of the committee's FEC registration and reports at the same time they file with the Federal Election Commission. See, e.g., Me. Rev. Stat. Ann. tit. 21A § 1058. Thus, despite the fact that the state may have different reporting requirements, the states recognize that allowing the federal committees to file copies of their FEC reports with the states is an efficient way of obtaining the same information, especially in light of the fact that federal committees are generally created to engage in federal activity and not state activity.^[3] Here, the inverse is true. The state committees are created to engage in state activity and not federal activity. And to the extent they engage in federal activity they would be required to file with the FEC and therefore be exempt from the registration and reporting provisions under § 527. Thus, these state and local political committees have no information relevant to federal elections and therefore copies of the state filings should satisfy the statutory requirements.

Finally, a third possible alternative would be to ask the Federal Election Commission for assistance. The FEC has been in the public disclosure business for more than 20 years. It has a system in place where information is readily accessible via the Internet. Thus, perhaps with the FEC's assistance, the IRS can adopt an alternative means of providing the required information without requiring expensive redundancy.

CONCLUSION

In conclusion, NABPAC encourages the IRS to examine multiple alternative solutions to the dilemma it faces. Rather than having thousands of committees filing thousands of redundant reports each year the IRS can adopt a regulatory solution not prohibited by the new statutory provisions of § 527. Several possible alternatives are available. The IRS can either grant a waiver to all committees that currently file electronically with an appropriate state agency, or to all committees whose reports are currently available via the Internet and simply provide a seamless linkage to the appropriate websites. Alternatively, the IRS can ask the committees to file a copy of their state reports simply appending a copy of Form 8872 to that report. Or, the IRS can ask the FEC for assistance in creating a system that would reduce the redundancy in filing duplicate information. Thus, NABPAC ask the IRS to revise its proposed revenue ruling in accordance with these recommended modifications.

Sincerely,

Jan Witold Baran

[1] We assume that approximately six to ten party committees registered in each state account for 300 to 500 registrations. As a generous estimate, there may be up to 100 state and local candidates required to register in each state although many state and local candidates will not have met the threshold for registration. This would account for an additional 5000 registrations. It is unlikely that there were more than 1000 registrations of committees that claim exemption under section 527 but do not otherwise publicly report their activities. This leaves at least 2500 state and local political committees that would have filed with the IRS under this provision assuming they were informed of the new notification provisions. This would mean that 25% to 30 % of the registrations were from state and local political committees that already report with state agencies. We believe that the percentage in fact will be higher.

[2] The FEC reports that there currently are 3,706 registered political committees. See <www.fec.gov/press/082200pacaccount.htm>.

[3] Should there be a report that does not supply the information that is required by § 527, the IRS could ask the committee to supplement the report with solely the missing information. This too would greatly reduce the burden of redundancy on the committees.